

**General Chauffeurs Sales Drivers and Helpers Local Union No. 179, an affiliate of the International Brotherhood of Teamsters, AFL-CIO and USF Holland, Inc.** Case 13-CD-591

June 26, 2001

DECISION AND DETERMINATION OF DISPUTE  
BY CHAIRMAN HURTGEN AND MEMBERS  
LIEBMAN AND WALSH

The charge in this Section 10(k) proceeding was filed on October 26, 2000, by the Employer, alleging that the Respondent, General Chauffeurs Sales Drivers and Helpers Local Union No. 179, an affiliate of the International Brotherhood of Teamsters, AFL-CIO (Local 179) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by International Association of Machinists & Aerospace Workers, Local No. 701 (Local 701). The hearing was held on November 27 and December 8, 2000, before Hearing Officer Denise R. Jackson-Riley.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, USF Holland, Inc., a Michigan corporation, is engaged in the business of interstate transportation of freight. The Employer operates in approximately 23 States and has several facilities in Illinois. During the past calendar year, it derived gross revenues in excess of \$50,000 for the transportation of freight from the State of Illinois directly to points outside the State of Illinois. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Teamsters, Local 179 and Local 701 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

*A. Background and Facts of Dispute*

The Employer is a common carrier engaged in the less-than-truckload transportation business. This work involves loading freight onto trailers, transporting the trailers by truck, and unloading the freight.

The Employer has three facilities in the Chicago area: Wheeling, McCook, and Joliet. Typically, the Employer's facilities consist of a terminal which contains a docking area where trucks are backed in, uncoupled, and unloaded, and a garage where maintenance and repair work is performed. At the Wheeling and McCook facili-

ties, the terminal and garage are approximately 100 feet apart and thus there is no need to assign the transporting of the trucks to the garage and back as a separate function.<sup>1</sup> In Joliet, however, the distance between the terminal and garage requires that the equipment be shuttled back and forth.<sup>2</sup> Since October 1, 2000, this work has been performed by the Employer's employees who are represented by Local 179.

The Joliet facility is the Employer's newest in the Chicago vicinity, and it began operations on November 15, 1999. The drivers at Wheeling and McCook are represented by Teamsters, Local 710 and the Joliet drivers are represented by Local 179. The mechanics and other garage employees at all three locations are represented by Local 701.

Prior to October 1, 2000, the Employer subcontracted operation of the garage at the Joliet facility. The work performed by the subcontractor included maintaining and repairing trucks and equipment, transporting equipment between the terminal and the garage, and fueling the trucks. The subcontractor's employees were represented by Local 179.

Local 701 filed a grievance over the subcontracting of the Joliet maintenance and repair work. The arbitrator found that the Employer had violated its collective-bargaining agreement with Local 701 by subcontracting bargaining unit work. The Employer then cancelled its contract with the subcontractor, put the maintenance positions up for bid, and assigned the fueling and transporting work to its drivers who were represented by Local 179.

The Employer posted openings for eight mechanic positions and one parts position. Herb Elam, the business representative for Local 701, notified the Employer that it believed that the Employer was posting an insufficient number of positions.<sup>3</sup> The Employer responded that of the 12 mechanics employed by the subcontractor, two were assigned fueling work which was not covered under the Local 701 agreement. Sometime after the process for bidding on the mechanic positions was complete, Local 701 was informed that the mechanics would not be allowed to transport equipment between the terminal and garage.<sup>4</sup> Moreover, the mechanics were assigned a defined garage area outside of which they could not move equipment. Local 701 filed a grievance over the assign-

<sup>1</sup> In fact, mechanics and drivers routinely share this duty at these facilities.

<sup>2</sup> This distance between the Joliet terminal and garage is estimated at one-third to one-half mile.

<sup>3</sup> The subcontractor had employed 12 mechanics.

<sup>4</sup> Mechanics perform this work at the other two facilities, and the Teamster-represented mechanics employed by the subcontractor had performed this work at Joliet.

ment of the fueling and shuttling work to the drivers/dockmen represented by Local 179.

Neal London, labor relations manager for USF Holland, notified the president of Local 179 of both the arbitrator's award and the grievance filed by Local 701. In response, Local 179 sent the Employer a letter threatening to strike and/or picket if the Employer reassigned the fueling and shuttling work to the mechanics represented by Local 701.

#### *B. Work in Dispute*

The disputed work involves "the fueling and transporting of equipment between the terminal and garage at USF Holland's facility located at 3801 Mound Round, Joliet, Illinois."

#### *C. Contentions of the Parties*

USF Holland contends that there is reasonable cause to believe that Local 179 violated Section 8(b)(4)(D) of the Act based on that Union's threat to strike and picket USF Holland if USF Holland ceased assigning the disputed work to employees it represented. USF Holland further contends that the work in dispute should be assigned to employees represented by Local 179 on the basis of employer preference and past practice, area and industry practice, economy and efficiency of operations, and relative skills and training.

Local 179 contends that the disputed work should be assigned to employees it represents for the reasons asserted by USF Holland except that it does not rely on the factor of relative skills and training.

Local 701 contends that the work in dispute should be awarded to employees it represents based on the factors of collective-bargaining agreements, past practice, economy and efficiency of operations, and an arbitration award.

#### *D. Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute. The Board requires that there be reasonable cause to believe (1) that a labor organization has used proscribed means to enforce its claim to the work in dispute, and (2) that there are competing claims to the disputed work between rival groups of employees.

On October 13, 2000, Local 701 filed a grievance against the Employer claiming that its assignment of the disputed work to employees represented by Local 179 violated the Employer's collective-bargaining agreement with Local 701.

By letter dated October 24, 2000, Local 179 claimed that the work of fueling and transporting of equipment between the terminal and garage at the Employer's Joliet, Illinois facility must be performed by its members. The letter also stated that:

Local 179 will regard any attempt by USF Holland to transfer this work to the Machinists as a material breach of the Company's collective bargaining agreement with Local 179. In the event that such a reassignment is made Local 179 will engage in any and all actions necessary to protect its right, including striking and picketing USF Holland.

In these circumstances, we find that there are competing claims for the disputed work between rival groups of employees and that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. Further, the parties have stipulated, and we find, that there is no agreed-upon method to adjust the dispute voluntarily.

Having found that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred, that there are competing claims for the work in dispute, and that there is no agreed-upon method for voluntary adjustment of the dispute within the meaning of Section 10(k), we conclude that the dispute is properly before the Board for determination.

#### *E. Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of the disputed work after considering various factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

##### *1. Certifications and collective-bargaining agreements*

There is no Board certification or bargaining order determining the collective-bargaining representative of the employees performing the work in dispute. USF Holland is signatory to current collective-bargaining agreements with both Local 179 and Local 701. The Employer's collective-bargaining agreement with Local 179 covers "drivers/dockmen." The Employer's collective-bargaining agreement with Local 701 covers, inter alia, "automotive machinist, mechanic, helper, and apprentice." Neither contract, however, specifically refers to the transportation of vehicles between the terminal and garage or to fueling. Accordingly, we find that the factors

of certification and collective-bargaining agreements do not favor awarding the disputed work to either group of employees.

## 2. Employer preference and current assignment

The Employer's Joliet facility opened on November 15, 1999 and from that date until September 30, 2000, the Employer subcontracted the maintenance work. Since October 1, 2000, USF Holland has assigned the work in dispute to employees represented by Local 179. The Employer has indicated that it prefers to continue to assign the work in dispute to employees represented by Local 179. We find that this factor favors an award of the disputed work to employees represented by Local 179.

## 3. Area and industry practice

Phillip Stanoch, vice president of labor relations at Roadway,<sup>5</sup> testified that USF Holland's current assignment of the fueling and transportation work is "overwhelmingly" in accordance with area practice. According to Stanoch, three of the four major unionized carriers in the industry assign the fueling and transport work as USF Holland has done.<sup>6</sup> Herb Elam, Local 701 business representative testified that Local 701 is party to numerous collective-bargaining agreements with trucking firms whereby Local 701 mechanics perform fueling work. As the testimony indicates that employees represented by both Unions perform fueling work, we find that the factor of area and industry practice does not favor awarding the work in dispute to employees represented by either union.

## 4. Relative skills and training

The parties agree that the transportation and fueling of trucks requires no special training or skills and employees represented by either union could perform these functions. We accordingly find that the factor of relative skills and training does not favor awarding the work in dispute to employees represented by either union.

## 5. Economy and efficiency of operations

Neal London, manager of labor relations for USF Holland, testified that it is more economical and efficient for the work in dispute to be performed by employees represented by Local 179 for several reasons. First, the mechanics are already working an average of 15 to 20 hours of overtime each week in order to complete their current

tasks. Thus, giving Local 701-represented mechanics the additional tasks of transporting and fueling the vehicles would result in payment of additional overtime to the mechanics. Presently, employees represented by Local 179 are performing the disputed work without incurring overtime. Moreover, London testified that Local 179 drivers can perform the fueling work more efficiently than mechanics. This is so because the drivers work out of the terminal where the trucks are parked and, thus, they need only drive the truck to the pump, fuel it, and return the truck to the terminal. According to London, if the fueling work were reassigned to employees represented by Local 701, a minimum of two extra steps would have to be added to the process. Specifically, in order for a mechanic to do the fueling, he would have to walk or be driven from the garage to the terminal to pick up the truck, drive the truck back to the garage to be fueled, drive the truck back to the terminal and park it, and then walk or be driven back to the garage.

Local 701 argues that a comparison of the wage and benefit provisions between its contract and the Local 179 contract with the Employer proves that USF Holland would be better off economically employing a helper under the Local 701 contract to fuel trucks as opposed to a driver/dockman. Local 701 also maintains that it is more efficient to have a mechanic retrieve a piece of equipment for repair. According to the testimony of Tom Gade, a mechanic at the Joliet facility, the mechanics have experienced several delays because the employees represented by the Teamsters have not brought the equipment to the garage in a timely fashion. Finally, Local 701 argues that USF is estopped from arguing that driver/dockmen should perform the transportation work because it previously employed mechanics to perform the work when the work was subcontracted.

We find that the Employer's economy of operation will be maximized by allowing employees represented by Local 179 who are already in the vicinity of the vehicles, and who can perform the work without incurring overtime, to perform the work. Moreover, we reject the argument by Local 701 that the work could be performed less expensively by hiring employees classified under its collective-bargaining agreement as "helpers." The Board does not consider wage differentials as a basis for awarding work. *Longshoremen ILA Local 1242 (Rail Distribution Center)*, 310 NLRB 1, 5 fn. 4 (1993). Accordingly, we find that this factor favors awarding the work in dispute to employees represented by Local 179.

## 6. Arbitration award

As indicated above, Local 701 obtained an arbitration award finding that USF Holland had violated its collective-bargaining agreement with Local 701 by subcon-

<sup>5</sup> Roadway, along with Yellow Freight, Consolidated Freightways, and ABF, are members of Trucking Management Incorporated (TMI), a multiemployer bargaining unit that negotiates contracts in Chicago. These four companies are parties to the National Master Freight Agreement which covers approximately 150,000 employees.

<sup>6</sup> The exception in the Chicago area is Yellow Freight System.

tracting bargaining unit work at its Joliet facility. Because Local 179 was not a party to, or bound by, that proceeding, we find that the arbitration award is entitled to little or no weight in determining the instant dispute. *Teamsters Local 952 (Rockwell International)*, 275 NLRB 611, 614 (1985).<sup>7</sup> We accordingly find that this factor does not favor awarding the work in dispute to employees represented by either union.

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<sup>7</sup> Moreover, even were the parties all bound to that arbitration award, it is unclear whether it governs the instant dispute. Thus, the arbitrator found that Joliet fell within Local 701's jurisdiction and that the Employer was subject to its collective-bargaining agreement with Local 701. However, the arbitrator did not expressly resolve whether the fueling and transporting portion of the subcontracted work properly belonged to Local 701. He only found that the Employer violated the collective-bargaining agreement by subcontracting "work"—which was not defined—that had traditionally been performed by Local 701 mechanics at existing facilities.

### Conclusions

After considering all the relevant factors, we conclude that employees represented by Local 179, are entitled to perform the work in dispute. We reach this conclusion relying on the factors of employer preference, and economy and efficiency of operations. In making this determination, we are awarding the disputed work to employees represented by Local 179, not to that Union or its members. This determination is limited to the controversy that gave rise to this proceeding.

### DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of USF Holland represented by Teamsters Local 179 are entitled to perform the fueling and transportation of vehicles from the Joliet terminal to the garage and back to the terminal.